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11 NOVATEL WIRELESS, INC., VERIZON
12 COMMUNICATIONS, INC., AND
13 CELLCO PARTNERSHIP D/B/A
14 VERIZON WIRELESS

15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 CARUCEL INVESTMENTS, L.P., a
18 Delaware limited partnership,
19 Plaintiff,

20 v.

21 NOVATEL WIRELESS, INC., a
22 Delaware corporation, AT&T
23 MOBILITY LLC, a Delaware limited
24 liability company, VERIZON
25 COMMUNICATIONS, INC., a Delaware
26 corporation, CELLCO PARTNERSHIP
27 D/B/A VERIZON WIRELESS, a
28 Delaware general partnership,

Defendants.

CASE NO. 3:16-cv-00118-H-KSC

**DEFENDANTS' EX PARTE
APPLICATION TO SHORTEN
TIME ON THEIR MOTION TO
STRIKE PORTIONS OF THE
SUPPLEMENTAL REPORT OF
PLAINTIFF'S DAMAGES
EXPERT PATRICK KENNEDY**

Judge: Hon. Marilyn L. Huff

1 Pursuant to Civil L.R. 7.1(e)(5), Defendants Novatel Wireless, Verizon
2 Communications, Inc., and Cellco Partnership d/b/a Verizon Wireless respectfully
3 request to shorten time on their Motion to Strike Portions of the Supplemental
4 Report of Plaintiff's Damages Expert Patrick Kennedy.

5 The reason for Defendants' request is that numerous case deadlines and
6 events are fast approaching or already underway. Most imminently, Defendants
7 have already filed a *Daubert* motion against the opinions in Dr. Kennedy's initial
8 Report, and one of the challenged sections of the Supplemental Report (Section VI)
9 appears to be an attempt by Dr. Kennedy to shore up his initial opinions to resist
10 Defendants' *Daubert* attack. Carucel's Opposition to Defendants' *Daubert* motion
11 is due February 16. Thus, it would benefit both parties to get a prompt resolution of
12 whether Carucel may rely on the opinions in the Supplemental Report when
13 resisting Defendants' *Daubert* motion.

14 Looking further ahead, the deadline for Defendants to file a *Daubert* motion
15 against the Supplemental Report itself is February 24. It would be beneficial to
16 have the Motion to Strike adjudicated before that date, so that the parties could
17 know whether it is even necessary to expend resources on *Daubert* motion practice
18 over the Supplemental Report.

19 For the foregoing reasons, Defendants respectfully request to shorten time on
20 their Motion to Strike. Specifically, Defendants request that Plaintiff's Opposition
21 to the Motion to Strike be due three days from today (February 10) and Defendants'
22 Reply be due three days later (February 13). Defendants additionally waive oral
23 argument on the Motion to Strike, unless the Court desires to hear oral argument.

24 Defendants contacted Plaintiff's counsel on February 7, 2017 to see whether
25 they would consent to this shortened briefing schedule. Plaintiff's counsel opposed,
26 stating: "Carucel opposes the request including on the grounds that it violates the
27 schedule already ordered by the Court and unduly burdens the plaintiff with an
28 excessively short response time." (See Ex. A, attached hereto.) But the schedule

1 that Carucel refers to (Dkt. 152) sets a schedule for *Daubert* motions over
2 supplemental reports. (*Id.* at 2: “Any Daubert motions addressing issues related to
3 the supplemental expert reports must be filed by February 24, 2017.”) It does not
4 address motions to strike. Indeed, as explained above, a central reason for
5 Defendants’ application to shorten time on the Motion to Strike is to enable the
6 Motion to Strike to be adjudicated before Carucel’s Opposition to Defendants’
7 *Daubert* motion is due February 16, so that the Defendants may know what portions
8 of the Supplemental Report (if any) need to be addressed in their Reply brief.

9

10

11 Dated: February 7, 2017

12 QUINN EMANUEL URQUHART
& SULLIVAN, LLP

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14 Bv: /s/ Amar Thakur
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Attorneys for Defendants Novatel
Wireless, Inc., Verizon Communications,
Inc. and Cellco Partnership d/b/a Verizon
Wireless

Exhibit A

Bruce Zisser

From: Robert Harkins <bobh@ruyakcherian.com>
Sent: Tuesday, February 07, 2017 3:24 PM
To: Amar Thakur; Jim Sarnecky; Bruce Zisser
Cc: 'Lindsey'; Robert Ruyak; Sunny Cherian; Novatel-Carucel
Subject: Re: Carucel Investments L.P. v. Novatel Wireless et al., Supplemental Damages Report and related documents

Amar,

Thank you for sending the message, but we are confused. Defendants knew Carucel was going to file a supplemental report, the parties met and conferred, and we agreed on a schedule that included a briefing schedule in the event that Defendants believed the supplement was not well-founded. The schedule was entered by the Court as an supplemental scheduling order.

You did not provide us with the grounds for this motion to strike, but whatever they are, Defendants can include them in a motion to strike the report pursuant to the schedule we have. Given that there are other important deadlines coming up on 2/10, we also do not think it is appropriate or justified to add another one.

If you want to discuss further, we can be available for a call tomorrow morning anytime after 9 a.m. Otherwise, please note in any administrative request for shortened time that Carucel opposes the request including on the grounds that it violates the schedule already ordered by the Court and unduly burdens the plaintiff with an excessively short response time. Also, please include a copy of this message with your request.

Thank you,
Bob

From: Amar Thakur <amarthakur@quinnmanuel.com>
Sent: Tuesday, February 7, 2017 5:45:07 PM
To: Jim Sarnecky; Bruce Zisser
Cc: 'Lindsey'; Robert Harkins; Robert Ruyak; Sunny Cherian; Novatel-Carucel
Subject: RE: Carucel Investments L.P. v. Novatel Wireless et al., Supplemental Damages Report and related documents

Counsel,

This evening Defendants plan to file a Motion to Strike Sections I-IV and Section VI from the Supplemental Report of Dr. Patrick Kennedy, dated February 3, 2017. Together with the Motion to Strike, Defendants will be filing an Application to Shorten Time on the Motion to Strike. Defendants believe that it is important to give the Court the opportunity to resolve the Motion to Strike before the February 16 Opposition to the Kennedy *Daubert*, since the outcome of the Motion to Strike will very likely impact what opinions Plaintiff may cite in opposing the Kennedy *Daubert*. Defendants also believe it would be beneficial to get a ruling on the Motion to Strike before the February 24 deadline to file a *Daubert* motion against the Supplemental Report itself, so that the parties could know whether there is any need to engage in *Daubert* briefing over the Supplemental Report.

With these goals in mind, Defendants will request that Plaintiff's Opposition to the Motion to Strike be due on February 10 and Defendants' Reply be due on February 13. Please let us know today whether Plaintiff agrees to this proposed briefing schedule.

Regards, Amar

Amar L. Thakur

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From: Jim Sarnecky [mailto:sarnecky@gdllawfirm.com]

Sent: Saturday, February 04, 2017 11:29 AM

To: Amar Thakur <amarthakur@quinnmanuel.com>; Bruce Zisser <brucezisser@quinnmanuel.com>; Novatel-Carucel <Novatel-Carucel@quinnmanuel.com>

Cc: 'Lindsey' <lindsey@gdllawfirm.com>; 'Robert Harkins' <bobh@ruyakcherian.com>; 'Robert Ruyak' <robertr@ruyakcherian.com>; 'Sunny Cherian' <sunnyc@ruyakcherian.com>

Subject: Carucel Investments L.P. v. Novatel Wireless et al., Supplemental Damages Report and related documents

Amar and Bruce,

Attached please find Patrick Kennedy's supplemental damages report along with a new version of his original report revised to reflect the AT&T settlement with Carucel.

Best regards,

Jim

James M. Sarnecky, Esq.
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CONFIDENTIALITY NOTE:

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the

CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that a true and correct copy of the above and
3 foregoing document has been served on February 7, 2017 to all counsel of record
4 who are deemed to have consented to electronic service via the Court's CM/ECF
5 system per Civil Local Rule 5.4. Any other counsel of record will be served by
6 electronic mail, facsimile and/or overnight delivery.

8 DATED: February 7, 2017 By: /s/ Amar Thakur

Amar Thakur

Amar Thakur

amarthakur@quinnmanuel.com

Attorneys for Defendants Novatel Wireless, Inc., Verizon Communications, Inc. and Cellco Partnership d/b/a Verizon Wireless